

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of L.P. &
L.T. (Minor Children), and K.T.
(Mother),

Appellant-Respondent,

v.

September 24, 2021

Court of Appeals Case No.
21A-JT-748

Appeal from the Posey Superior
Court

The Honorable Travis Clowers,
Judge

May, Judge.

[1] K.T. (“Mother”)¹ appeals the involuntary termination of her parental rights to L.P. and L.T. (collectively, “Children”). She presents two issues for our review, which we restate as:

1. Whether the trial court abused its discretion when it denied mother’s oral motion to continue the termination fact-finding hearing; and
2. Whether the record contains evidence to support the challenged findings.

We affirm.

Facts and Procedural History

[2] Mother is the biological mother of L.P. and L.T., born November 29, 2006, and May 31, 2016, respectively. On September 16, 2019, the Department of Child Services (“DCS”) received a report that Mother was using methamphetamine

¹ M.P. (“Father”) was also involved in these proceedings, but it is unclear whether the trial court ultimately terminated his parental rights to Children. He does not participate in this appeal, and we will limit our recitation to those facts involving Mother.

while caring for Children. After investigating and confirming that report, DCS removed Children from Mother's care. Father could not be located, and Children were placed with maternal grandparents. On September 17, 2019, DCS filed petitions to adjudicate Children as Children in Need of Services ("CHINS") based on Mother's methamphetamine use.

[3] On September 17, 2019, the trial court held an initial hearing on the CHINS petition during which Mother requested counsel. Mother was appointed counsel, and the trial court reset the initial hearing for September 30, 2019. On September 30, 2019, Mother admitted the allegations as set forth in the CHINS petition. Based thereon, the trial court adjudicated Children as CHINS and scheduled a dispositional hearing. The trial court held its dispositional hearing on October 28, 2019, and ordered Mother to participate in services aimed at facilitating her reunification with Children. The court directed Mother to complete a substance abuse assessment and follow any recommendations; engage in homebased counseling; refrain from using, selling, or buying illegal drugs; obtain and maintain a stable home environment; obtain and maintain stable employment; participate in any assessments and/or services recommended by DCS; and visit with Children.²

[4] In its January 2020 review report, DCS indicated Mother was not compliant with services because she had not met with certain service providers, had not

² While the trial court ordered Mother to participate in services as indicated, the trial court did not issue a dispositional order as to L.P. until December 23, 2019, and as to L.T. until March 20, 2020.

been in contact with the Family Case Manager, and had not completed a random drug test since December 30, 2019. The report noted Mother tested positive for methamphetamine on October 24, 2019; December 3, 2019; and December 19, 2019; and for methamphetamine and THC on October 31, 2019; November 8, 2019; November 26, 2019; and December 16, 2019. Mother had completed a substance abuse assessment but had not followed any recommendations therefrom.

[5] In its June 2020 progress report, DCS indicated Children’s placement had changed from maternal grandparents to maternal aunt and uncle due to grandparents’ ages and health. Mother visited with Children virtually due to the COVID-19 pandemic and wanted to resume in-person visits. However, in-person visits did not resume because Mother was “couch hopping” and Children’s placement worried about COVID-19 exposure due to Mother’s lack of consistent housing. (Ex. Vol. II at 80.) In the July 2020 progress report, DCS indicated Mother remained non-compliant with drug screens, had not completed parenting services as ordered, and was inconsistent with visiting Children. On September 14, 2020, the trial court changed Children’s permanency plan from reunification to adoption based on Mother’s non-compliance with services.

[6] On October 1, 2020, DCS filed petitions to terminate Mother’s parental rights to Children. Mother started an inpatient drug treatment program on October 23, 2020, but voluntarily left it two days later. In November 2020, Mother entered inpatient drug treatment, and her random drug screens were suspended

while she participated in treatment. Mother completed the inpatient portion of her treatment on January 2, 2021. As part of her drug treatment program, she was required to follow up with outpatient visits. Mother was discharged from the outpatient portion of the treatment for missing too many classes. Despite a referral to restart drug screens, Mother did not complete random drug screens as ordered.

[7] On December 14, 2020, Mother was not present at a review hearing but she was represented by counsel. At that hearing, Mother waived the statutory requirement that the trial court hold a fact-finding hearing within ninety days of the filing of the termination petition, and the parties agreed to appear before the trial court on February 26, 2021, for a fact-finding hearing. On February 26, 2021, at the beginning of the fact-finding hearing, Mother orally moved to continue the proceedings:

Judge, at this point, I would request the Court to consider granting the Mother a continuance. Um, this case opened, the termination case opened, in June or May, I'm sorry of [2020], which as the Court's aware uh was in the height of the pandemic, uh the mother has uh worked as hard as she can during the pandemic to participate in her services, she been through some in-patient treatment, uh, she's maintained employment, she's had a couple of different jobs, um, has recently lost her housing due to losing a job, um which is a little unclear to me how that happened, um, but I would request the Court to consider granting her some additional time, as the Court's aware um there have been multiple moratoriums on other types of proceedings, including mortgage foreclosures, including evictions, um it would seem counterintuitive to me for a matter that as important as termination of parent/child relationship that hinges on the

ability of the parent to make appointments, to keep appointments, to have things scheduled that are directly affected by the pandemic, to proceed forward when we are not allowing um, plaintiffs to proceed on things such as mortgage foreclosures which are clearly not as important, uh not as life changing as termination of a parent/child relationship. So given the circumstances that we find ourselves today, I would request the Court grant the Mother some additional time, uh to follow through with her services and be reunited with her children.

(Tr. Vol. II at 4-5) (errors in original). DCS argued that the CHINS case involving Children had been open long before the pandemic started and that Mother had been granted plenty of time to complete services. The trial court denied Mother's motion to continue:

I think that you're motion to continue is more, goes more to an argument that the Court shouldn't terminate because of COVID and some of the restrictions and I'll certainly be attentive to those arguments, but um we have time frames, and I, I, I'm gonna deny your motion to continue and and let you guys put on evidence and see where it leads us.

(*Id.* at 6-7) (errors in original).

[8] The trial court held the fact-finding hearing and, on April 19, 2021, issued its order terminating Mother's parental rights to Children. That order was amended on May 25, 2021, in response to Father's motion to correct error, to indicate the court terminated only Mother's parental rights.

Discussion and Decision

1. Motion to Continue

[9] The decision to grant or deny a continuance rests within the sound discretion of the juvenile court. *Rowlett v. Vanderburgh Cty. Office of Family & Children*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. We will reverse only for an abuse of that discretion. *Id.* An abuse of discretion occurs when the party requesting the continuance has shown good cause for granting the motion and the juvenile court denies it. *Id.* No abuse of discretion will be found when the moving party is not prejudiced by the denial of its motion. *Id.* Mother argues the trial court abused its discretion when it denied her motion continue because the COVID-19 pandemic made it difficult for Mother to complete services. Mother contends she was prejudiced by the denial because the pandemic

affected her ability to demonstrate to the court that she could satisfy the caseworker's requirements and could have been reunited with the children she has now lost forever. A continuance in this case would have allowed [Mother] an additional amount of time to continue in her sobriety and compliance, to continue to make substantial progress, and to satisfy DCS requirements.

(Mother's Br. at 24.)

[10] The CHINS case began in September 2019. DCS filed its petitions to terminate Mother's parental rights to Children in October 2020, after Mother failed to participate in services, visit with Children, and achieve and maintain sobriety. Mother did not begin to engage in services until approximately November 2020, when she entered inpatient treatment for substance abuse. While Mother

argued that the COVID-19 pandemic impacted her ability to participate in services, she actually participated in more services after the pandemic started than before. Mother's motion to continue is essentially a plea to allow her to continue to possibly participate in services that have been available to her for almost two years. Children cannot be made to languish, waiting for permanency, until Mother demonstrates she can provide them with a safe, stable home. *See Baker v. Marion Cty. OFC*, 810 N.E.2d 1035, 1040 n.4 (Ind. 2004) (limitations on trial court's ability to approve long-term foster care are designed to ensure a child does not "languish, forgotten, in custodial limbo for long periods of time without permanency") (quoting *In re Priser*, No. 19861, 2004 WL 541124 at *6 (Ohio Ct. App. March 19, 2004)). The trial court did not abuse its discretion when it denied Mother's motion to continue. *Contra Rowlett*, 841 N.E.2d at 619 (holding Rowlett demonstrated good cause for granting motion to continue because he had not yet been offered the opportunity to participate in services and demonstrate his fitness as a parent due to his incarceration).

2. Challenged Findings

[11] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a judgment terminating a

parent's rights only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied, cert. denied* 534 U.S. 1161 (2002).

[12] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of the parents to those of the children when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own children should not be terminated solely because there is a better home available for the children, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet parental responsibilities. *Id.* at 836.

[13] To terminate a parent-child relationship, the State must allege and prove:

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. If the court finds the allegations in the petition are true, it must terminate the parent-child relationship. Ind. Code § 31-35-2-8.

[14] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Mother challenges a majority of the trial court’s findings, and the remainder we must accept as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

A. Findings Regarding Mother's Substance Abuse

[15] Mother challenges the trial court's findings regarding her substance abuse:³

7. Throughout the duration of the case, the Children were not placed back with either Mother or Father. Mother continued to struggle greatly with methamphetamine use, did not complete drug treatment . . .

* * * * *

9. Mother failed to consistently participate in drug screening to monitor her sobriety.

* * * * *

11. Recently, Mother failed to take drug screens since leaving in-patient treatment on January 2, 2021. Specifically, Mother demonstrated her unwillingness to participate by failing to screen on February 2, 2021, February 10, 2021, and February 18, 2021.

* * * * *

18. Mother failed to participate in treatment to address substance abuse.

³ The trial court issued separate amended orders for each child. The language in the orders is virtually identical. We will quote from the order regarding L.P. unless otherwise indicated.

19. During the CHINS case, Mother attempted drug treatment at Stepping-Stones, and Brentwood Meadows but left both programs shortly after starting them.

20. Most recently, Mother attempted to complete substance abuse treatment at NOW Counseling. She completed the in-patient portion of the program in early January of 2021; however, she was terminated from the out-patient portion of the treatment for missing too many meetings.

21. Mother has failed to remain drug free and has continued to abuse substances. Mother detailed her long history of drug abuse while testifying in the termination trial. Mother stated she began methamphetamine “socially” in her early twenties but that the use became “much worse” as time passed. She explained that she began using methamphetamine daily in her late twenties and continued to do so throughout her life until she entered NOW Counseling’s in-patient program in late December of 2020. By Mother’s own admission, she used methamphetamine consistently during the underlying CHINS case.

22. She stated that she normally smoked methamphetamine but recently had started injecting it by needle. Mother also testified that in 2016 she was taken to the hospital due to an “overdose” that took place while at least one of the Children were present.

23. Mother did testify to her participation in NOW Counseling’s in-patient drug rehabilitation program in late December of 2020 and early January of 2021. While this was a positive step for Mother, she has since fallen back into a pattern of noncompliance. As previously stated, evidence established that even after rehab she continues to miss scheduled drug screens and was terminated from the out-patient program in which she was participating.

(App. Vol. II at 42-4.) Mother contends these findings are not supported by evidence because she had “been making progress” since completing inpatient treatment in January 2021 and she had been sober since November 2020.

(Mother’s Br. at 30.)

[16] DCS presented testimony that while Mother completed the inpatient portion of her drug treatment, she had not completed the outpatient portion of the treatment because she had missed too many appointments and had to “wait thirty days in order to re-sign up for more classes.” (Tr. Vol. II at 18.) Prior to Mother’s entry into inpatient drug treatment, “a majority [of Mother’s drug screens] were positive for methamphetamine” and she missed several drug screens during that time period. (*Id.* at 50.) During Mother’s time in inpatient drug treatment, Mother’s drug screens were put on hold. After Mother completed inpatient treatment, DCS reinstated Mother’s random drug screens, but Mother did not complete four drug screens ordered after completing inpatient treatment.

[17] Mother reported she was sober at the time of the fact-finding hearing, but the trial court was not required to believe her. See *Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004) (“factfinders are not required to believe a witness’s testimony even when it is uncontradicted”). Further, while Mother’s recent progress in addressing her substance abuse problems is encouraging, the trial court must consider her pattern of past behavior in addition to her recent actions. See *K.T.K. v. Indiana Dept. of Child Services, Dearborn Cty. Ofc.*, 989 N.E.2d 1225, 1231-2 (Ind. 2013) (trial court must consider parent’s “habitual

pattern of conduct” in addition to any recent progress with regard to that conduct “to determine whether there is a substantial probability of future neglect or deprivation”). Mother’s arguments are invitations for us to reweigh the evidence, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

B. Other Challenged Findings

[18] Mother also challenges the findings made by the trial court regarding her visitation with Children, the stability of her housing and employment, and her compliance with services:

7. . . . Mother . . . did not have stable housing and was unemployed for almost the entirety of the CHINS case.

* * * * *

12. Mother failed to regularly visit the Children during the CHINS case despite being given an opportunity to do so.

13. Evidence established that the Mother failed to visit the Children on [a] regular basis throughout the life of the CHINS case. Visits were held virtually to accommodate Mother through the COVID-19 restrictions and she continued to miss visits. Over a 7 month period in 2020, Mother made less than 50% of visits with her [C]hildren. Throughout the life of the case, Mother missed in-person and virtual visits.

14. Mother failed to maintain stable and appropriate housing for the Children after being given the services of parent-aide.

15. Evidence established that Mother was homeless shortly after the Children were removed from her care. She testified that for months she was “couch surfing and living on the streets.” At the time of [the] hearing, Mother was living with two male individuals in Evansville, Indiana. Mother could not give details on either male and even struggled to recall their names. However, she did confirm that one of the males living in the residence was convicted of felony neglect of a child, and is currently on probation.

16. By her own admission, Mother does not currently have housing suitable for her [C]hildren. Her testimony established that she stayed with “friends” or was “homeless” throughout the life of this case.

17. Heather Levi, an employee of Maglinger Behavioral Health Services, testified that she was assigned to work with Mother as a parent-aide. She testified that she met with Mother one time in May of 2020 for about an hour. She stated that she discussed housing options and treatment options for Mother. After Mother left the appointment, Ms. Levi testified that she tried to contact her on a weekly basis to follow-up on plans for housing and treatment. Ms. Levi called or texted each week through the months of June, July and August with no response from Mother. Additionally, Mother failed to show-up for drug treatment in August. Ms. Levi discontinued contacting Mother at that time.

* * * * *

24. Based on Mother’s failure to comply with the orders of the CHINS Court and her continued noncompliance in visiting the [C]hildren, substance abuse treatment, parent-aid contact, and drug screens, it is clear that even if given years to change her conduct the Mother will never fully participate in the necessary services.

(App. Vol. II at 42-4.) Mother contends she was employed at the time of the fact-finding hearing and she knew the names of her roommates, but she had “difficulty pronouncing one and spelling both last names.” (Mother’s Br. at 29.) Further, Mother asserts she “had reached out to her current visit supervisor/parent aid regarding finding housing and submitting applications through Aurora for housing assistance.” (*Id.*) Finally, Mother argues that she attended “every visit with the Children” since she had been released from inpatient drug treatment. (*Id.* at 30.)

[19] Mother testified that two days prior to the fact-finding hearing, she “switched jobs[.]” (Tr. Vol. II at 15.) Prior to that time, she worked at Mediclean, for three weeks, and prior to inpatient treatment she worked at Hacienda for a week and a half. Mother testified she lived with friends, but she did not indicate the address at which she lived with them, and, when asked if one of the people with whom she lived had a prior conviction for neglect of a dependent, Mother replied, “I mean I don’t know exactly what all his, I don’t know exactly what all he’s gotten in trouble for, I just know he’s sober now, and what, it’s a sober place for me to live.” (*Id.* at 28.)

[20] Regarding visitation with Children, Mother missed over half of the scheduled visits with Children between April 2020 and October 2020. Mother’s visits went on hold when she entered inpatient treatment in November 2020, and restarted on January 25, 2021, when she completed inpatient treatment. Mother’s visits were virtual in 2021, and each lasted approximately twenty minutes. Mother attended all visits after leaving inpatient treatment. While

Mother has made some progress towards reunification, most of that progress occurred after DCS filed its petition to terminate Mother's parental rights to Children. Mother's arguments are invitations for us to reweigh the evidence, which we cannot do.⁴ *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

Conclusion

[21] The trial court did not abuse its discretion when it denied Mother's oral motion to continue. Additionally, the findings Mother challenges are supported by the evidence. Accordingly, we affirm.

[22] Affirmed.

Kirsch, J., and Vaidik, J., concur.

⁴ Mother does not challenge the trial court's conclusions based on its findings. As we have held the challenged findings were supported by the evidence, the trial court did not err when it involuntarily terminated Mother's parental rights to Children. *See Matter of Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (despite parents' recent progress in services, the trial court did not err when it terminated parents' parental rights to their children).